

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

SMA IRREVOCABLE TRUST,)
)
Plaintiff,)
)
vs.)
)
)
R. CAPITAL ADVISORS, LLC;)
GARY R. VIBBARD; *and*)
TIMOTHY M. O’LEARY)
)
Defendants.)

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)
AARON B. GREENSPAN; *and*)
ANTHONY F. SANSONE, JR.)
)
Plaintiffs,)
)
vs.)
)
)
R. CAPITAL ADVISORS, LLC;)
GARY R. VIBBARD; *and*)
TIMOTHY M. O’LEARY)
)
Defendants.)

Case No.: 4:11-cv-00697 ERW
[consolidated with 4:11-cv-01940 FRB]

MEMORANDUM AND ORDER

This matter is before the Court *sua sponte* under the authority of Fed. R. Civ. Pro. 42(a).

The instant consolidated case is composed of two separate actions. The first of those actions is *SMA Irrevocable Trust*. In this action, Plaintiff SMA Irrevocable Trust (“SMA”) brought suit concerning investments made with R. Capital Advisors, LLC. SMA alleged violations of federal and state securities laws and pled a total of 22 grounds for relief. SMA

named as defendants R. Capital Advisors, LLC, Gary R. Vibbard, and Timothy M. O’Leary.¹

The second action is *Greenspan*, which is identical in all material aspects to *SMA Irrevocable Trust*. In this action, Plaintiffs Aaron B. Greenspan and Anthony F. Sansone, Jr. (“*Greenspan Plaintiffs*”) also brought suit concerning investments made with R. Capital Advisors. Moreover, the *Greenspan Plaintiffs* alleged identical violations of law, pled 22 identical counts for relief, and named the same three defendants.

Because *SMA Irrevocable Trust* and *Greenspan* shared common questions of law and fact, the Court ordered the cases to be consolidated. Order, ECF No. 42. Now that the cases have been consolidated, there are currently two matters pending before the Court. First, Defendant O’Leary has filed a Motion to Dismiss in *SMA Irrevocable Trust*. ECF No. 26. Second, the *Greenspan Plaintiffs* have filed a Motion for Leave to File a First Amended Complaint. ECF No. 44.

Under Rule 42, when multiple actions share common questions of law or fact, a court may consolidate the actions or “issue any other orders to avoid unnecessary cost or delay.” Fed. R. Civ. Pro. 42(a)(3). Courts regularly rely upon Rule 42 in ordering parties to file a unified or master complaint in consolidated cases. *See, e.g., In re Propulsid Prods. Liab. Litig.*, 208 F.R.D. 133, 141 (E.D.La 2002). Courts enjoy discretion in exercising this authority. *EEOC v. HBE Corp.*, 135 F.3d 543, 551 (8th Cir. 1998).

In the instant case, the Court has consolidated the *SMA Irrevocable Trust* and *Greenspan* actions because they share common questions of issue and fact. Consideration of the two matters

¹SMA also named as defendants other persons and entities who previously have been dismissed.

currently pending before the Court would likely cause the two actions to diverge. This divergence would serve only to cause the parties and the Court unnecessary confusion and delay. Therefore, the Court will order Plaintiff SMA and the *Greenspan* Plaintiffs to jointly file a single, unified complaint. This unified complaint will be the operative complaint for the consolidated case. As a result, the *Greenspan* Plaintiffs' Motion to Amend will be denied, as moot. Defendant O'Leary's Motion to Dismiss will also be denied, as moot. The Court expresses no judgment as to the merits of either of these matters, but instead simply orders Plaintiffs to file the unified complaint as an administrative matter. Each Defendant shall answer or otherwise respond to the unified complaint within 21 days of said complaint. Finally, discovery and other pre-trial procedures will be addressed at a later time in conjunction with a Rule 16 Conference.

Accordingly,

IT IS HEREBY ORDERED that Plaintiffs SMA Irrevocable Trust, Aaron B. Greenspan, and Anthony F. Sansone, Jr., are to jointly file a single, unified complaint no later than March 15, 2012. The *Greenspan* Plaintiffs' Motion for Leave to File a First Amended Complaint, ECF No. 44, is **denied, as moot**. Defendant Timothy M. O'Leary's Motion to Dismiss, ECF No. 26, is also **denied, as moot**.

Dated this 23rd day of February, 2012.



E. RICHARD WEBBER
SENIOR UNITED STATES DISTRICT JUDGE